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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/941,186	08/28/2001	David Lohr	FSI-83	5985
26875	7590	02/10/2004	EXAMINER	
WOOD, HERRON & EVANS, LLP			PHAM, MINH CHAU THI	
2700 CAREW TOWER			ART UNIT	
441 VINE STREET			PAPER NUMBER	
CINCINNATI, OH 45202			1724	

DATE MAILED: 02/10/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/941,186

Applicant(s)

LOHR ET AL.

Examiner

Minh-Chau T. Pham

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 and 13-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 and 13-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

1. After thoroughly considering the Appeal Brief filed on December 29, 2003, the finality of the instant application is withdrawn and the prosecution reopens.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-10 and 13-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hugh (6,117,687; Figs. 1, 5 & 6; col. 2, lines 41-58; col. 6, line 66 through col. 7, line 20; col. 8, line 58 through col. 9, line 24), in view of Urrusti et al (6,508,989 B1; 1, 2 & 6 in Fig. 2; col. 1, lines 16-24; col. 2, lines 35-45).

Hugh discloses a controlled atmosphere incubator comprising a heater, a cabinet in thermal communication with the heater and surrounded by top, bottom, rear and side walls with an opening, an outer door pivotally mounted to the front side, a blower mounted within the cabinet, a plenum formed in the chamber and providing an air path through the chamber and the plenum being partially formed by a plate mounted across the chamber between the inlet and outlet of the blower, and a filter attached to the inlet of the blower. Claims 1-10 and 13-17 differ from the disclosure of Hugh in that the apparatus comprises a VOC filter attached to the inlet of the blower. Urrusti et al disclose an incubator which has a chemical filter capable to capture inorganic, organic particles or even germs (see col. 1, lines 17-18) located at the inlet of the blower (see col. 2, lines 35-45). It would have been obvious to a person having ordinary skill in the art at the time the invention was made to provide a chemical filter located at the inlet of the blower as taught by Urrusti et al in the incubator of Hugh since it is well known in the

art that chemical filter would effectively removes any undesirable chemical contaminants from the air circulation of the incubator.

Response to Arguments

In view of the Appeal Brief filed on December 29, 2003, PROSECUTION IS HEREBY REOPENED.

To avoid abandonment of the application, appellant must exercise one of the following two options:

- (1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,
- (2) request reinstatement of the appeal.

If reinstatement of the appeal is requested, such request must be accompanied by a supplemental appeal brief, but no new amendments, affidavits (37 CFR 1.130, 1.131 or 1.132) or other evidence are permitted. See 37 CFR 1.193(b)(2).

Applicant's main argument is that none of the cited secondary references discloses an "incubator" and none of the cited prior arts discloses a "chemical filter located at the inlet of the blower". The Examiner now drops all the cited secondary references and newly introduces the Urrusti et al as the secondary reference to show the limitation of a chemical filter in an incubator which is capable to capture inorganic, organic particles or even germs (see col. 1, lines 17-18) located at the inlet of the blower (see col. 2, lines 35-45). It would have been obvious to a person having ordinary skill in the art at the time the invention was made to substitute an HEPA filter by a chemical filter located at the inlet of the blower as taught by Urrusti et al in the incubator

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of Hugh since it is well known in the art that chemical filter would effectively removes any undesirable chemical contaminants from the air circulation of the incubator.

Applicant's arguments with respect to claims 1-10 and 13-17 have been considered but are moot in view of the new ground(s) of rejection, as discussed above.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- Snyders (5,125,889) discloses an infant incubator with microfilter.
- McDonough et al (6,402,681 B1) disclose a phototherapy apparatus.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Minh-Chau T. Pham whose telephone number is (571) 272-1163. The examiner can normally be reached on Mon/Tues/Thur/Fri 7:00 am - 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Blaine Copenheaver can be reached on (571) 272-1156. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-0987.

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A handwritten signature in black ink, appearing to read 'Minh-Chau Pham', written in a cursive style.

Minh-Chau Pham

Patent Examiner

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February 3, 2004